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11 *Attorneys for Plaintiff,*

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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

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20 **DONNA KYLE, Individually**  
21 **and On Behalf of All Others**  
22 **Similarly Situated,**

23 **Plaintiff,**

24 **v.**

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28 **AUTOMATED RECOVERY**  
29 **SYSTEMS, INC., and DOES 1**  
30 **through 10, inclusive, and each of**  
31 **them,**

**Defendants.**

32 **Case No.:**

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35 **CLASS ACTION COMPLAINT**  
36 **FOR DAMAGES**

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39 **JURY TRIAL DEMANDED**

40  
41 **INTRODUCTION**

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1 invading Plaintiff's privacy. Plaintiff alleges as follows upon personal  
 2 knowledge as to themselves and their own acts and experiences, and, as to  
 3 all other matters, upon information and belief, including investigation  
 4 conducted by her attorneys.

5 2. The TCPA was designed to prevent calls and text messages like the ones  
 6 described herein, and to protect the privacy of citizens like Plaintiff.  
 7 "Voluminous consumer complaints about abuses of telephone technology –  
 8 for example, computerized calls dispatched to private homes – prompted  
 9 Congress to pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct.  
 10 740, 744 (2012).

11 3. In enacting the TCPA, Congress intended to give consumers a choice as to  
 12 how corporate similar entities may contact them, and made specific findings  
 13 that "[t]echnologies that might allow consumers to avoid receiving such  
 14 calls are not universally available, are costly, are unlikely to be enforced, or  
 15 place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243,  
 16 § 11. In support of this, Congress found that

17 [b]anning such automated or prerecorded telephone calls  
 18 to the home, except when the receiving party consents to  
 19 receiving the call or when such calls are necessary in an  
 20 emergency situation affecting the health and safety of the  
 21 consumer, is the only effective means of protecting  
 22 telephone consumers from this nuisance and privacy  
 23 invasion.

24 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012  
 25 WL 3292838, at\* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings  
 26 on TCPA's purpose).

27 4. Congress also specifically found that "the evidence presented to the  
 28 Congress indicates that automated or prerecorded calls are a nuisance and an  
 invasion of privacy, regardless of the type of call...." Id. at §§ 12-13. See  
 also, *Mims*, 132 S. Ct. at 744.

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## **JURISDICTION AND VENUE**

- 1 5. This Court has federal question jurisdiction because this case arises out of
- 2 violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.,*
- 3 *LLC*, 132 S. Ct. 740 (2012).
- 4 6. Venue is proper in the United States District Court for the Central District of
- 5 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendant
- 6 is subject to personal jurisdiction in the County of Ventura, State of
- 7 California as not only does Defendant regularly conduct business throughout
- 8 the State of California, but Plaintiff resides within the County of Ventura
- 9 within the State of California.

## **PARTIES**

- 10 7. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
- 11 the State of California. Plaintiff is, and at all times mentioned herein was a
- 12 “person” as defined by 47 U.S.C. § 153 (39).
- 13 8. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
- 14 at all times mentioned herein was, a corporation whose corporate
- 15 headquarters is in New Mexico. Defendant, is and at all times mentioned
- 16 herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153
- 17 (39). Plaintiff alleges that at all times relevant herein Defendant conducted
- 18 business in the State of California and in the County of Ventura, and within
- 19 this judicial district.
- 20

## **FACTUAL ALLEGATIONS**

- 21 9. At all times relevant, Plaintiff was a citizen of the State of California.
- 22 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
- 23 47 U.S.C. § 153 (39).
- 24 10. Defendant is, and at all times mentioned herein was, a Corporation and a
- 25 “person,” as defined by 47 U.S.C. § 153 (39).
- 26 11. At all times relevant Defendant conducted business in the State of California
- 27

1 and in the County of Ventura, within this judicial district.  
2

3 12. Beginning in or around May of 2015, Defendant utilized Plaintiff's cellular  
4 telephone number, ending in 4857, to place calls to Plaintiff pertaining to an  
5 alleged debt owed.  
6 13. Plaintiff told Defendant's agents to stop calling her cellular phone because  
7 she was going through Bankruptcy thereby revoking any consent. Plaintiff  
8 provided Defendant with her Bankruptcy attorney's information.  
9 14. On or around May 14, 2015 Plaintiff filed for bankruptcy. Despite this,  
10 Defendants continued to call Plaintiff.  
11 15. During this time, Defendant placed calls on a daily basis.  
12 16. The calls Defendant placed to Plaintiff's cellular telephone were placed via  
13 an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C.  
14 § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).  
15 17. This ATDS has the capacity to store or produce telephone numbers to be  
16 dialed, using a random or sequential number generator.  
17 18. The telephone numbers that Defendant, or its agents, called was assigned to  
18 cellular telephone services for which Plaintiff incurs a charge for incoming  
19 calls pursuant to 47 U.S.C. § 227 (b)(1).  
20 19. These telephone calls constituted calls that were not for emergency purposes  
21 as defined by 47 U.S.C. § 227 (b)(1)(A)(i).  
22 20. Plaintiff revoked any consent Defendant may have had to call her cellular  
23 phone. Not only did Plaintiff specifically demand that Defendant stop calling  
24 her cellular telephone, but, by filing bankruptcy, any contractual relationship  
25 which Plaintiff had with the underlying credit was voided, thus terminating  
26 any relationship with the underlying creditor and Defendant who sought to  
27 collect the alleged debt by its telephone calls. Accordingly, neither  
28 Defendant nor its agents were provided with prior express consent to place  
calls via its ATDS to Plaintiff's cellular telephone, pursuant to 47 U.S.C. §

1 227 (b)(1)(A).  
2

3 21.These telephone calls by Defendant, or its agents, violated 47 U.S.C. §  
4 227(b)(1).  
5

6 **CLASS ACTION ALLEGATIONS**  
7

8 22.Plastic brings this action on behalf of herself and on behalf of and all  
9 others similarly situated (“the Class”).  
10

11 23.Plastic represents, and is a member of, the Class, consisting of All persons  
12 within the United States who received any telephone call/s from Defendant  
13 or its agent/s and/or employee/s to said person’s cellular telephone made  
14 through the use of any automatic telephone dialing system within the four  
15 years prior to the filling of the Complaint.  
16

17 24.Defendant and its employees or agents are excluded from the Class.  
18 Plaintiff does not know the number of members in the Class, but believes the  
19 Class members number in the thousands, if not more. Thus, this matter  
20 should be certified as a Class action to assist in the expeditious litigation of  
21 this matter.  
22

23 25.Plastic and members of the Class were harmed by the acts of Defendant in  
24 at least the following ways: Defendant, either directly or through its agents,  
25 illegally contacted Plaintiff and the Class members via their cellular  
26 telephones, thereby causing Plaintiff and the Class members to incur certain  
27 cellular telephone charges or reduce cellular telephone time for which  
28 Plaintiff and the Class members previously paid, and invading the privacy of  
said Plaintiff and the Class members. Plaintiff and the Class members were  
damaged thereby.  
29

30 26.This suit seeks only damages and injunctive relief for recovery of economic  
31 injury on behalf of the Class, and it expressly is not intended to request any  
32 recovery for personal injury and claims related thereto. Plaintiff reserves the  
33 right to expand the Class definition to seek recovery on behalf of additional  
34

1 persons as warranted as facts are learned in further investigation and  
2 discovery.

3 27. The joinder of the Class members is impractical and the disposition of their  
4 claims in the Class action will provide substantial benefits both to the parties  
5 and to the court. The Class can be identified through Defendant's records or  
6 Defendant's agents' records.

7 28. There is a well-defined community of interest in the questions of law and  
8 fact involved affecting the parties to be represented. The questions of law  
9 and fact to the Class predominate over questions which may affect  
10 individual Class members, including the following:

11 a. Whether, within the four years prior to the filing of this Complaint,  
12 Defendant or its agents placed any calls to the Class (other than a call  
13 made for emergency purposes or made with the prior express consent  
14 of the called party) to a Class member using any automatic dialing  
15 system to any telephone number assigned to a cellular phone service;  
16 b. Whether Plaintiff and the Class members were damaged thereby, and  
17 the extent of damages for such violation; and  
18 c. Whether Defendant and its agents should be enjoined from engaging  
19 in such conduct in the future.

20 29. As a person that received numerous calls from Defendant via an automated  
21 telephone dialing system, Plaintiff is asserting claims that are typical of the  
22 Class. Plaintiff will fairly and adequately represent and protect the interests  
23 of the Class in that Plaintiff has no interests antagonistic to any member of  
24 the Class.

25 30. Plaintiff and the members of the Class have all suffered irreparable harm as  
26 a result of the Defendant's unlawful and wrongful conduct. Absent a class  
27 action, the Class will continue to face the potential for irreparable harm. In  
28 addition, these violations of law will be allowed to proceed without remedy

1 and Defendant will likely continue such illegal conduct. Because of the size  
 2 of the individual Class member's claims, few, if any, Class members could  
 3 afford to seek legal redress for the wrongs complained of herein.

4 31. Plaintiff has retained counsel experienced in handling class action claims  
 5 and claims involving violations of the Telephone Consumer Protection Act.

6 32. A class action is a superior method for the fair and efficient adjudication of  
 7 this controversy. Class-wide damages are essential to induce Defendant to  
 8 comply with federal and California law. The interest of Class members in  
 9 individually controlling the prosecution of separate claims against Defendant  
 10 is small because the maximum statutory damages in an individual action for  
 11 violation of privacy are minimal. Management of these claims is likely to  
 12 present significantly fewer difficulties than those presented in many class  
 13 claims.

14 33. Defendant has acted on grounds generally applicable to the Class, thereby  
 15 making appropriate final injunctive relief and corresponding declaratory  
 16 relief with respect to the Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER  
 19 PROTECTION ACT**

20 **47 U.S.C. § 227 ET SEQ.**

21 34. Plaintiff incorporates by reference all of the above paragraphs of this  
 22 Complaint as though fully stated herein.

23 35. The foregoing acts and omissions of Defendant constitute numerous and  
 24 multiple negligent violations of the TCPA, including but not limited to each  
 25 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

26 36. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,  
 27 Plaintiff and The Class are entitled to an award of \$500.00 in statutory  
 28 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

1 37. Plaintiff and the Class are also entitled to and seek injunctive relief  
2 prohibiting such conduct in the future.

3 **SECOND CAUSE OF ACTION**

4 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
5 **CONSUMER PROTECTION ACT**

6 **47 U.S.C. § 227 ET SEQ.**

7 38. Plaintiff incorporates by reference all of the above paragraphs of this  
8 Complaint as though fully stated herein.

9 39. The foregoing acts and omissions of Defendant constitute numerous and  
10 multiple knowing and/or willful violations of the TCPA, including but not  
11 limited to each and every one of the above-cited provisions of 47 U.S.C. §  
12 227 et seq.

13 40. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §  
14 227 et seq., Plaintiffs and The Class are entitled to an award of \$1,500.00 in  
15 statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
16 227(b)(3)(C).

17 41. Plaintiff and the Class are also entitled to and seek injunctive relief  
18 prohibiting such conduct in the future.

19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The  
21 Class members the following relief against Defendant:

22 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**  
23 **TCPA, 47 U.S.C. § 227 ET SEQ.**

24 42. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),  
25 Plaintiff seeks for herself and each Class member \$500.00 in statutory  
26 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

27 43. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such  
28 conduct in the future.

1 44. Any other relief the Court may deem just and proper.  
2

3 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**  
4 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

5 45. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §  
6 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in  
7 statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
8 227(b)(3)(C).

9 46. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such  
10 conduct in the future.

11 47. Any other relief the Court may deem just and proper.

12 **Trial By Jury**

13 48. Pursuant to the seventh amendment to the Constitution of the United States  
14 of America, Plaintiff is entitled to, and demands, a trial by jury.

15 Dated: October 30, 2015 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

16 BY: /s/ TODD M. FRIEDMAN  
17 TODD M. FRIEDMAN, ESQ.  
18 ATTORNEYS FOR PLAINTIFF

19 ADDITIONAL COUNSEL FOR PLAINTIFF

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